

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1092 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BHUPTAJI ANARJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

MR KR RAVAL for Appellant

MR KT DAVE, APP for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 05/03/98

CAV JUDGEMENT (PER ; C.K.BUCH, J)

This appeal is preferred by the accused Bhuptaji Amraji Thakore, Re: village Chimangadh, Ta; Kankrej of District : Banaskantha, against the order of conviction recorded by the ld. Addl. Sessions Judge, Banaskantha at Palanpur in sessions Case No. 82/97 on 20.10.1997 whereby the accused appellant is convicted for the

offence punishable under Sec.302, 506(2) of I.P.Code and Sec.135 of the Bombay Police act and is sentenced to suffer R/I for life and a fine of Rs. 500/, I/d to undergo R/I for 1 Year for the offence punishable under Sec.302 of I.P.Code, R/I for 1 Year and a fine of Rs.200/, I/d to suffer R/I for 4 months for the offence punishable under Sec.506(2) of I.P.Code and R/I for 4 months and a fine of Rs. 100/, I/d to undergo R/I for 1 month for the offence punishable under Sec./135 of the Bombay Police Act. All the sentences are ordered to run concurrently. According to the accused, deceased Jyotsana is killed by complainant Ashaben and Naranbhai parents of the deceased as deceased Jyotsna was in love with the accused and hence the accused has been falsely implicated in this serious offence.

2. According to the case of the prosecution, on 9.9.1996, the accused had gone to the residence of complainant Ashaben - mother of the deceased, to call Naranbhai (father of deceased Jyotsana) and at that time, there was hot exchange of words and abuses between the accused and husband of the complainant Ashaben and also with deceased Jyotsana. On that day, there was "Bapora Ceremony" (popularly known as Besna) on account of death of the mother of the accused. On that day, the accused had threatened the deceased with dire consequences.

On the day of incident i.e. 10.9.1996, at about 4.00 P.M. when complainant Ashaben along with her daughter Jyotsana were going towards their field with fodder for buffaloes and when they were passing through dense Baval trees, it is alleged that near crematory, the accused came out from the thick ambush of Baval trees and intercepted the complainant and Jyotsana and took up quarrel referring to the incident which took place on the previous day. According to the prosecution, complainant Ashaben requested the accused with folded hands to let them go, but she was given a push. It is alleged that Jyotsana also with folded hand requested to let them go, but the accused gave a dharia blow on the folded hands of Jyotsana with such a force that as a result of which, wrist of one hand was cut and was separated and the other arm was posteriorly separated and bony mark seen. Injured Jyotsana succumbed to injuries and died instantaneously. It is further the prosecution case that on complainant Ashaben raising shouts for help, three persons who were in the nearby areas, rushed to the place of incident and they were witness Shankarbhai Karsanbhai Patel, Karshanbhai Agarabhai Nayi and Gangdas Dhulabhai. However, before they reach to the place of incident, the accused ran away from the place of incident.

It is the case of the prosecution that the scene of offence is between the house and the field of the father of deceased Jyotsana. Complainant Ashaben narrated the incident to these persons and requested them to call her husband Naranbhai.

Complainant Ashaben thereafter was immediately taken to Shihori Police Station on the very same day and she lodged her complaint at about 17.05 hours. After completion of investigation, police submitted chargesheet against the accused for the offences punishable under Sec.302, 506(2) of the I.P.Code and Sec.135 of the Bombay Police Act. At the end of the trial, the ld. Addl. Sessions Judge, held the accused guilty for the aforesaid offences and by the impugned judgment, convicted and sentenced the accused as aforesaid.

3. This is a jail appeal and ld. Counsel Mr. KR Raval is appointed amicus curie, who has presented the case of the appellant-accused. Ld. Counsel Mr. Raval has taken us through relevant oral as well as documentary evidence.

4. We have gone through the record and proceedings of the case. We have heard the ld. Counsel for the respective parties. Ld. Addl. Sessions Judge has appreciated oral as well as documentary evidence led by the prosecution and especially the ld. Addl. Sessions Judge has relied on the oral testimony of four prosecution witnesses namely (i) Complainant Ashaben Naranbhai (exh.8), (ii) Naranbhai Agarabhai Nayi (exh.29), (iii) Shankarbhai Karsanbhai (exh.23) and (iv) Panch Nagjibhai Jivanbhai (exh.19). The ld. Addl. Sessions Judge has also taken into consideration other relevant documentary evidence on record viz. FIR (exh.33), panchanama of the scene of offence (exh.13), panchanama of recovery of blood-stained clothes of the deceased (exh.15), discovery panchanama (exh.21).

The ld. Sessions Judge has also appreciated the evidence of Dr. Mahesh Somabhai Patel and the post-mortem report (exh.27). It is not necessary to appreciate defence version and it is the duty of the prosecution to prove the case beyond reasonable doubt.

It is proved beyond doubt that inspite of requests with folded hands first by the complainant Ashaben and thereafter by deceased Jyotsana, accused inflicted dharia blows on the person of deceased Jyotsana and one of the blows on the folded hands resulting in to separation of one hand from the wrist joint and seriously injuring other hand. According to the Post-mortem Notes, in all six injuries on the person of deceased Jyotsana were found and all are incised wound. Injury No.1 is on

the back of the neck by which 3rd and 4th survival vertebra were also fractured. Two injuries are on face and because of these injuries, three fractures were also caused. In nut-shell, blows given to the deceased were with full force and with a clear intention to kill the deceased. Thus, the intention of the accused to kill the deceased is very much clear from his own conduct of hiding himself in the ambush of Baval trees with dharia and waiting for complainant and her daughter. The force with which the dharia blow is given cutting one hand and injuring other one seriously, clearly proves the motive and intention of the accused to kill deceased Jyotsana. Injuries as noted in the post-mortem report (exh.27) have also been proved by the evidence of Dr. Mahesh Patel. According to the Medical Officer, injuries were sufficient to cause death. The prosecution has also proved that deceased had not given any cause for provocation or excitement to the accused so as to assault her and kill her at the time of incident.

The learned Addl. Sessions Judge has properly appreciated and discarded alleged infirmities pointed out by the defence side and has rightly appreciated in light of evidence available on record. Though some minor discrepancies were brought to the notice of the ld. Addl. Sessions Judge, but on going through the entire record and proceedings of the case, alleged discrepancies cannot be said to be material discrepancies which go to the root of the case of the prosecution viz (i) absence of reference of underwear put on by deceased Jyotsana in inquest panchanama, (ii) non-availability of bucket which was carried by the complainant and deceased Jyotsana from the place of incident, (iii) non-examination of witness Bachubhai and (iv) relations of complainant Ashaben and panch witness Nagji Jivanbhai who has proved recovery of blood stained dharia at the instance of the accused.

The ld. Addl. Sessions Judge has ruled out possibility of false implication of the accused in the alleged incident. Recovery of blood stained clothes of the deceased which were brought to the police station by the police constable from the hospital shows that blood-stained underwear of deceased Jyotsana was handed over to the police constable by the hospital authorities and clothes were recovered and sealed in presence of panchas. This panch is examined by the prosecution and it is nowhere suggested to this panch in the cross-examination that at the time of recovery of these clothes, underwear of Jyotsana was not there or the same was not stained with blood. This panch witness is not cross-examined at all. Bucket carried by the complainant and deceased Jyotsana with fodder was not found from the place of incident, but it is mentioned in the panchanama

(exh.13) that fodder was found from the place of incident and it is not easy to carry out the same in hands. So, the version of complainant Ashaben is amply supported by the panchanama of the scene of offence.

Independent witness Shankarbhai Karsanbhai (exh.23) has also supported the version of complainant Ashaben. According to this witness, he had reached the place of incident in couple of minutes. Even Ashaben herself states in the cross-examination that this witness Shankar Karsan had reached the place of offence after accused ran away therefrom. Deposition of witness Shankar Karsan is rightly appreciated by the ld. Addl. Sessions Judge and it corroborates (i) version of complainant Ashaben, (ii) disclosure of the name of the accused within couple of minutes to this witness in reference to the complaint i.e. FIR which is lodged within 1 1/2 hours to the nearest police station. Evidence of this witness does not support the defence version of committing murder of Jyotsana by her parents.

It is true that the person who had gone to call father of the deceased immediately after incident, has not been examined, but witness Shankar has proved the fact that the person referred by complainant Ashaben in her deposition was sent by this witness Shankarbhai to call the father of the deceased. This witness Shankar is Patel by caste and has no reason to implicate the accused in the offence. This witness has specifically denied the presence of Naranbhai Agrabhai father of the deceased- at the scene of offence. The version of Naranbhai Agrabhai is also properly appreciated by the ld. Addl. Sessions Judge. Dharia recovered at the instance of the accused is also found having blood stains and the group of blood found on dharia is the same which is found on the clothes of the deceased recovered during the inquest in presence of panchas. As discussed earlier, from the blows given, selection of the part of the body and force with which the blows are given, intention of the accused is as clear as day light that he intended to commit murder of Jyotsana. From the record and proceedings, we find that the prosecution has proved the accused guilty beyond reasonable doubt and we do not see any reason, more particularly when evidence of important witnesses is amply corroborated by oral as well as documentary evidence, to take the different view than the view taken by the ld. Sessions Judge.

Ld. counsel for the appellant has tried to impress upon us that the defence version is probablised version and it is not safe to rely on the sole evidence of complainant Ashaben. However, as discussed above, it is difficult to accept this submission. The contention that the accused is falsely implicated because he was

found in awkward physical condition with the deceased and because of that complainant Ashaben and her husband Naranbhai (parents of the deceased) killed Jyotsna on the spot i.e. place of incident, without taking her back to home, is also not worth accepting.

The evidence on record, without any doubt, indicates the crime committed by the accused and, therefore, we are in agreement with the view expressed by the ld. Addl. Sessions Judge on appreciation of evidence. When there is no scope, after scanning the judgment and evidence which is placed before us, to interfere with the findings arrived at by the ld. Addl. Sessions Judge, it would not be proper for the sake of academic interest to record even an implied disagreement by taking contrary view than the one which is taken by the ld. Addl. Sessions Judge, more particularly in view of the observations made by the Supreme Court in the case of State of Karnataka v/s Hemareddy, reported in AIR 1981 SC 1417 which reads as under :-

" This court has observed in Girija Nandini

Devi v/s Bigendra Nandini Chaudhary (1967) 1 SCR 93 : (AIR 1976 SC 1124) that it is not the duty of the appellate Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court Expression of general agreement with the reasons given by the court the decision of which is under appeal, will ordinarily suffice."

For the reasons recorded, this appeal is hereby dismissed.

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